

Information). After a careful review of the claims, it has been concluded that the rejections are in error and the rejections are, therefore, traversed.

2. - Claims 1-7, 11-17 and 19-22 have been rejected as being anticipated by Audio Technica (Product Information). However, the Examiner provides no basis for the conclusory statement that the claimed invention is anticipated by any Audio Technica product information.

The only indication of the basis of the Examiner's assertion is found on form PTO-892 (supplied with the Office Action) under the heading "NON-PATENT DOCUMENTS". Listed on line U of form PTO-892 is the reference "Audio Technica, Audio Technica ATW601 UniPak Transmitter System Product Information, Sound Investment 1997-2001, All-pages provided".

Included with the Office Action is 5 pages of literature that apparently corresponds to the reference at line U of form PTO-892. From the URL printed at the bottom, the 5 pages were apparently retrieved from the web site "<http://www.zounds.com>".

By activating the "About Us" feature of the home page of the web site "<http://www.zounds.com>", a visitor finds that "zounds is by far the largest pure-play direct seller of musical instruments". From a review of the website, one can conclude that the pages referenced by the Examiner are part of an on-line catalog.

Turning now to the Office Action, a review of the five pages reveal that the end of the second and fifth page contain the copyright notice "© Copyright 1997-2001 Sound

Investment, LLC. All Rights Reserved". A review of the other web pages of the web site "http://www.zzounds.com", reveals that most (if not all) of the other pages of the web site contain an identical legend. The presence of an identical legend, on the other pages supports the conclusion that the copyright notice refers to the on-line catalog, not to the contents of the pages.

In addition, the on-line catalog of "http://www.zzounds.com" contains product literature from a large number of other audio manufacturers (e.g., Mackie, Akai, Yamaha, Roland, Alesis, Behringer, etc.). Since the on-line catalog contains product literature of many other manufacturers, the catalog must be considered to be a compilation of matter.

Since the catalog is a compilation of matter, it is clear that the copyright notice refers to the overall compilation of materials, not to the product information of any of its suppliers. It is also clear that since the copyright refers to the compilation of the catalog, it cannot be taken as a reliable indicator of the publication date of any of its pages. Since the copyright cannot be taken as a reliable indication of the publication date of any of its pages, the Product Information found at the web site cannot be assumed to anticipate the claimed invention under 35 U.S.C. §102(b).

It is noted next that even assuming arguendo, that the copyright notice could be considered a reliable indicator of the publication date of the referenced pages (which it cannot) there is another reason why the referenced pages do not anticipate the invention. More specifically, the

copyright explicitly recites publication dates for the on-line catalog of 1997-2001. As would be clear to any person of skill in the art, a recitation of the year "2001" includes any date up to and including December 31, 2001. Since the filing date of the invention occurred on July 19, 2001, the filing date clearly falls within the publication dates of the claimed copyright of the on-line catalog.

3. Claims 8-10 and 18 have been rejected as being obvious over Audio Technica (Product Information). However, as demonstrated above, the Product Information is not available as a prior art reference. Since the Product Information is not available as a prior art reference, the rejection is believed to be improper and should be withdrawn.

4. As an accommodation to the Examiner, and if necessary, the applicant also hereby offers to provide an affidavit under 37 CFR §1.131 averring, with facts and personal knowledge, that publication of the product literature on the web site "<http://www.zzounds.com>" could not have occurred before the filing date of the instant application.

5. Allowance of claims 1-22, as now presented, is believed to be in order and such action is earnestly solicited. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the

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NO. 3632 P. 8

subject application, he is respectfully requested to
telephone applicant's undersigned attorney.

Respectfully submitted,
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